

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THOMAS DAVIS,

Plaintiff,

v.

**MARTIN MARIETTA MATERIALS,
INC.,**

Defendant.

§
§
§
§
§
§
§
§
§
§

Civil Action No. **3:23-CV-836-L**

ORDER

The Findings, Conclusions and Recommendation of the United States Magistrate Judge Renee Toliver (“Report”) (Doc. 18) was entered on July 9, 2024, recommending that the court **grant in part and deny in part** Defendant Martin Marietta Materials, Inc.’s (“Defendant”) Motion to Dismiss (“Motion”) (Doc. 5) and **dismiss with prejudice** Plaintiff Thomas Davis’s (“Plaintiff”) claim under Title VII of the 1964 Civil Rights Act (“Title VII”), 42 U.S.C. §§2000e. Neither party has filed Objections to the Report, and the deadline to do so has expired.

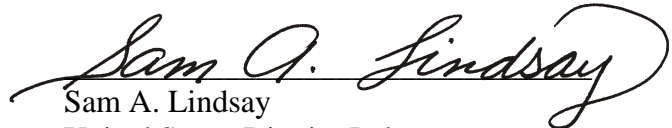
On April 20, 2023, Plaintiff filed this civil action against Defendant for violating the Age Discrimination in Employment Act (“ADEA”) and Title VII. Doc. 12 at 7-9. On May 17, 2023, Defendant filed a Motion to Dismiss (Doc. 6). After Judge Toliver issued her first Findings, Conclusions, and Recommendation (Doc. 11) recommending that the court grant Defendant’s Motion, Plaintiff filed an Amended Complaint (Doc. 12) on October 31, 2023. Thereafter, Judge Toliver vacated her first Findings, Conclusions, and Recommendation. On November 14, 2023, Defendant filed its Motion pursuant to Federal Rule of Civil Procedure 12(b)(6).

In the Report, Judge Toliver concludes that Plaintiff adequately pled an age-based harassment/hostile work environment claim under the ADEA; however, he failed to plead

sufficient facts to state a claim for relief under Title VII. Report 9. Further, she recommends that Plaintiff's Title VII claim should be dismissed with prejudice, because the court previously outlined the deficiencies in his Title VII claim, yet he failed to cure them. *Id.* at 12. Accordingly, the court should conclude that Plaintiff has pled his "best case," and his Title VII claim should be dismissed with prejudice. *Id.* at 13-14 (citing *Jones v. Greninger*, 188 F.3d 322, 327 (5th Cir. 1999) (holding that courts may appropriately dismiss an action with prejudice upon finding that a plaintiff has alleged his best case)).

Having considered the pleadings, Motion, Report, file, and record, the court determines that the Magistrate Judge's finding and conclusions in the Report are correct, and **accepts** them as those of the court. Therefore, the court **grants** Defendant's Motion and **dismisses with prejudice** Plaintiff's Title VII claim. Accordingly, the only claim that remains is Plaintiff's claim for age-based harassment/hostile work environment under the ADEA.

It is so ordered this 25th day of July, 2024.


Sam A. Lindsay
United States District Judge